

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4 **BARBARA ANDEL,**                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   **Case No.:**

8 **CAPITAL ONE BANK (USA), N.A.,**                                   )

9                                   Defendant                                   )

10                                   **COMPLAINT AND DEMAND FOR**  
11                                   **JURY TRIAL**

12                                   **COMPLAINT**

13                   BARBARA ANDEL (“Plaintiff”), by and through her attorneys, KIMMEL  
14 & SILVERMAN, P.C., alleges the following against CAPITAL ONE BANK  
15 (USA), N.A. (“Defendant”):  
16

17                                   **INTRODUCTION**

18                   1.     Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act (“TCPA”).  
20

21                                   **JURISDICTION AND VENUE**

22                   2.     Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
24

25                   3.     Defendant conducts business in the Commonwealth of Pennsylvania  
and as such, personal jurisdiction is established.



1           14. Plaintiff knew Defendant was calling her using an automatic telephone  
2 dialing system and automatic and/or pre-recorded messages as she received calls  
3 from Defendant that began with a delay or pause prior to a live representative of  
4 Defendant coming on the line.  
5

6           15. Defendant's telephone calls were not made for "emergency purposes."

7           16. Desiring to stop these repeated, unwanted calls, Plaintiff spoke to  
8 Defendant soon after the calls began and revoked any previous consent that  
9 Defendant had to contact her.  
10

11           17. Defendant heard and acknowledged this request to stop calling.

12           18. Once Defendant was aware that its calls were unwanted and was told  
13 to stop calling, there was no lawful purpose to making further calls, nor was there  
14 any good faith reason to place calls.  
15

16           19. In spite of her repeated instruction to stop calling her cellular  
17 telephone, Defendant instead continued to call her repeatedly.  
18

19           20. Plaintiff found Defendant's repeated calls to be harassing, invasive,  
20 frustrating, annoying, and upsetting.

21           21. Upon information and belief, Defendant conducts business in a  
22 manner which violates the Telephone Consumer Protection Act.  
23  
24  
25

**COUNT I**  
**DEFENDANT VIOLATED THE**  
**TELEPHONE CONSUMER PROTECTION ACT**

22. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

23. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system and automatic and/or pre-recorded messages

24. Defendant's calls to Plaintiff were not made for "emergency purposes."

25. After Plaintiff told Defendant to stop calling, the Defendant knew or should have known it did not have consent to call and/or that any consent it thought it had was revoked, yet willfully and/or knowingly continued to place calls to Plaintiff's cellular telephone using an automatic telephone dialing system and/or pre-recorded voice.

26. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

27. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

1           28. As a result of the above violations of the TCPA, Plaintiff has suffered  
2 the losses and damages as set forth above entitling Plaintiff to an award of  
3 statutory, actual and trebles damages.  
4

5  
6 **PRAYER FOR RELIEF**

7           WHEREFORE, Plaintiff, BARBARA ANDEL, respectfully prays for a  
8 judgment as follows:  
9

- 10           a. All actual damages suffered pursuant to 47 U.S.C. §  
11           227(b)(3)(A);  
12  
13           b. Statutory damages of \$500.00 per telephone call pursuant to 47  
14           U.S.C. § 227(b)(3)(B);  
15  
16           c. Treble damages of \$1,500.00 per telephone call pursuant to 47  
17           U.S.C. §227(b)(3) or alternatively that amount for all calls  
18           made after Defendant was notified that they were calling the  
19           wrong person and wrong number;  
20  
21           d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);  
22  
23           e. Any other relief deemed appropriate by this Honorable Court.  
24  
25

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, BARBARA ANDEL, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: September 13, 2019

KIMMEL & SILVERMAN, P.C.

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